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OCT 30 2009

OFFICE OF PETITIONS

In re Application of :
Gavrial et al. : DECISION ON
Application No. 10/727584 : PETITION
Filing or 371(c) Date: 12/05/2003 :
For: HYBRID COMMUNICATION :
TERMINAL - ALARM SYSTEM :
:

This is a decision on the renewed petition under 37 CFR 1.137(b), filed June 8, 2006, to revive the above-identified application.

The Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The application as-filed on December 5, 2003, included an oath/declaration identifying as inventors Marian Gravila and Gabriel Patulea; however, the signature of inventor Gravila was missing from the oath/declaration. In response, this Office mailed a Notice to File Missing Parts of Nonprovisional Application (Notice), on March 8, 2004. The Notice required a properly signed oath/declaration, and a late filing fee oath or declaration surcharge, set a two (2) month period for reply. Applicant filed a response in the form of an oath or declaration on November 15, 2004; however, the response did not include the late filing fee oath or declaration surcharge. Also of note is that the oath/declaration identified as the sole inventor, Marian Gravila, Petitioner herein. It appears that the second page of the originally filed oath/declaration had been omitted from the oath or declaration filed on November 15, 2004.

The Office mailed a Notice of Incomplete Reply (Nonprovisional) on December 1, 2004, notifying Applicant of the deficient reply. In response, Applicant filed the late filing fee oath or declaration surcharge on January 11, 2005; however, the Notice originally set a two (2) month period for reply and while it allowed for extensions of time, the maximum number of months available for extending the response period was five (5), and including the two (2) month period originally set in the Notice, Applicant had a total of seven (7) months from the mail date of the

Notice, or until October 8, 2004, to file the late filing fee oath or declaration surcharge, and thereby complete the reply to the Notice. (A request and fee for a five month extension of time would also have been required. At the time the late filing fee oath or declaration surcharge was filed on January 11, 2005, the application had become abandoned, and a petition to revive the application was required. Because no complete and proper response to the Notice (mailed March 8, 2004), was received, the application became abandoned on May 9, 2004. A Notice of Abandonment was mailed October 27, 2005.

Applicant filed a petition to withdraw the holding of abandonment on December 20, 2005, wherein Applicant asserted that because the 65.00 surcharge was charged to her credit card, and because no further communication was received from this Office, she believed that the application was in good standing.

The petition was dismissed in a Decision mailed February 8, 2006. The Decision informed Applicant that the application became abandoned by operation of law for failing to file a complete and proper (timely) reply to the Notice. Applicant was further informed that while this Office attempts to notify an Applicant of the status of their applications, it is Applicant's responsibility to have an awareness of the rules, and to file a complete and proper reply to an Office communication as the condition of the application requires.

Applicant filed a petition to revive the application on March 14, 2006, and included an oath/declaration executed by Marian Gravila and Gabriel Patulea. The oath/declaration was defective because it failed to state that the person making the oath/declaration has reviewed and understands the contents of the application.

A further review of the application file reveals that the oath/declaration filed with the original application papers also was defective because, in addition to missing inventor Gavrla's signature, it also failed to state that the person making the oath/declaration has reviewed and understands the contents of the application.

The petition was dismissed in a Decision mailed April 19, 2006. A proper oath/declaration was required.

The present petition

Applicant timely files the present petition and includes an oath/declaration in compliance with 37 CFR 1.63, identifying as and signed by inventors Marian Gravila and Gabriel Patulea.

However, the petition is signed by inventor Marian Gravila only.

A Grantable Petition Under 37 CFR 1.137(b)

A grantable petition pursuant to this paragraph must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The present petition lacks item (3).

As to item (3), Applicant is advised that the statement of delay is not acceptable. In this regard, petitioner's attention is directed to 37 CFR 1.33(b), which states.

(b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
- (3) An assignee as provided for under § 3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

An unsigned amendment (or other paper) or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where the amendment (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other applicant.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that petitioner herein (Marian Gravila) was ever given a power of attorney to act on behalf of inventor Gabriel Patulea, or that she is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b), the petition is considered to not contain a proper statement of unintentional delay.

Conclusion

The petition is dismissed without prejudice. Applicant should file a renewed petition signed by both inventors (or a power of attorney or an assignment demonstrating that she has the authority to act alone in the present application).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
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